SERIES.

**G.O. No.** 1995

**DATED** 17-11-26

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**[Despatch Abstract.]**

Suit - (South Kanara). - Mangalore Sub Court - C.

Escheat - Compromise - Accepted.

C.F. 91

Revenue - **DEPARTMENT.**

CURRENT No. 2495-B

*Received* 192 *Registered* 19

*Subject.*

Suits - (South Kanara) - Mangalore Sub Court - O.S.No.59/24

Escheat - Compromise - Proposals submitted.

ENCLOSURES
No.
Spare copies

Reference-A No. 6176/26.1,

*Station* Madras, *Dated the* 12th November 1926.

From W. SCOTT BROWN, ESQUIRE, I.C.S.,

Secretary - Land Revenue. and

The Board of Revenue, ~~Revenue~~ Settlement, etc

Separate Revenue.

P.L.Moore Esquire, C.I.E., I.C.S.,
Commissioner of Land Revenue.

Resolution
Reference.

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Read the following paper:--

Letter from G.N.Wells Esquire, M.A., I.C.S., Collector of South Kanara, Ref.on.No.A-3-4677/21, dated the 6th November 1926.

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REFERENCE.

Submitted to Government for orders.

2. The escheat in question was sanctioned by Government in G.O.Misc., No.959 dated the 30th May 1922.

3. The Board agrees with the Collector in considering that the case for Government is weak as the evidence of the four witnesses now available to prove the absence of heirs to Rudraya at the time of the death of his daughter is valueless, and it is not clear that the seven persons who are dead ar

on whose statements mainly the escheat was sanctioned, had special means or knowledge within the meaning of section 32 (5) of the Indian Evidence Act so as to make their statements admissible as evidence in the suit. Government stand to gai by getting possession of the property even if they get no mes profits. As under the terms of the compromise now proposed by the Collector, the value of the improvements on the land will have to be paid by Government to the defendants, the Boa considers it worth while endeavouring to compromise the suit provided the claim for the value of improvements by the defendants is cancelled by the claim for mesne profits by Government.

4. As the Collector asks for orders by 17th November 1926, the Board requests that they may be communicated direct to him before that date, a copy being sent to the Board.

W Stuart Bourne 12/11

Secretary.

To the Secretary to Government, Revenue Department, with one Copy to the Collector of South Kanara.

C.N.N./12-11-1926.

12.11.26

Copy of letter from G.T. Wells Esquire .A., I.C.S., Collector of South Kanara, Ref.on.No.A-3-4677/21, dated the 6th November 1926.

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Suit - Mangalore - Sub Court - O.S.No.59/24 (Escheat - Uppinangadi taluk - Mokkada &c., villages - Property of the deceased Rudraya).

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The above suit was filed under sanction conveyed in Board's Proceedings No.2786 isc., dated the 17th December 1923. The trial of the suit is not yet complete. The Government Pleader, Mangalore, who is conducting the suit on behalf of the Government (Plaintiff) writes that the Defendants in the suit have made a proposal that if the Government relinquished their claim for mesne profits for the period beyond three years prior to the date of the suit they would concede that there were no heirs of Rudraya living at the time of the death of his daughter Shridevi who was his last heir as contended by Government and he suggests that it would be advantageous to accept this proposal of the Defendants for reasons stated by him(vide copy of his letter dated the 4th November 1926 enclosed).

2. The property was declared escheat to Government as it was found on enquiry that the deceased Rudraya had left no heirs. The statements of the seven persons referred to by the Government Pleader, Mangalore, tended to prove this fact. Unfortunately they are all reported to be dead. It is therefore doubtful whether it will be possible to prove our contention to the satisfaction of the court with the evidence of the four persons now procured who do not know anything beyond the fact that the deceased Rudraya had no sons and that he had only a daughter and a sister who both died without leaving any issues They are unable to say whether there was any Bhandu of Rudraya living at the time of his death. The first issue in the suit being "whether Rudraya has left no heirs and whether the Plaintiff (Government is entitled to his estate in the right of escheat" and the burden of proving this being on the plain-

4

Plaintiff (Government), I am afraid that as stated by the Government Pleader there is considerable practical difficulty in adducing satisfactory evidence on it.

3. The proposal amounts to the waiving of the claim to mesne profits amounting to about Rs.32,000/- out of Rs.42,211-10-11 claimed in the plaint but the Government Pleader points out that it is doubtful whether the court will allow mesne profits for 12 years as claimed in the plaint. Several of the Defendants are men of no substance and it would be practically impossible to recover the mesne profits from them even if there should be a decree for the same.

Copy not submitted to Govt

4. I therefore agree with the Government Pleader, Mangalore, in his opinion that it would be advantageous to accept the Defendant's proposal and recommend that the Board may be pleased to accord sanction for the same and communicate the order sufficiently early to enable me to furnish the necessary information to the Government Pleader, Mangalore, by the 17th instant as requested by him. The Subordinate Judge is pressing for the early disposal of the suit as it is an old one, and has been reluctant to grant adjournments.

5. A copy of Schedule 'E' showing the amount of mesne profits claimed in the plaint from each of the Defendants in the suit is enclosed for favour of reference and return.

put up below current file

C.N.N./12-11-1926.

5

Copy of letter from the Government Pleader, Mangalore, to the Collector of South Kanara, Mangalore, dated 4-11-1926.

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Ref:--Suits O.S.No.59/1924 on the file of the Sub-Court, South Kanara.

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When the trial of the above suit was resumed on the 2nd instant the Defendants made a proposal that, if the Government relinquished its claim for mesne profits for the period beyond 3 years prior to the date of the suit, then they would concede that ~~they~~ there were no heirs of Rudrayya living at the time of the death of his daughter Shridevi who was the last heir of Rudrayya according to the contention of the Government.

2 The following are two of the issues framed in the above suit.

Issue No.1. Whether Rudrayya has left no heirs and whether the plaintiff is entitled to his estate on the right of escheat.

Issue No.VIII. To what mesne profits, if any, the plaintiff is entitled and from which of the Defendants and for what period; whether the rate claimed is correct and whether Plaintiff is entitled to claim any interest and if so, at what rate?

3 Rudrayya was a Hindu governed by the Mitakshra Law of Inheritance. He died in or about 1867 and his widow Laxmi died in or about 1868 or 1869. Rudrayya's only daughter Shridevi then succeeded to the estate and alienated portions of the estate and what remained in her possession after the alienations she made over to her husband Venkatramanaya by a deed styled a Moktiarinama in 1877 and she died in or about 1879 or 1880. The contention of the Government is that the several alienations are invalid and that the property has escheated to the Government.

4 At the time of the revenue inquiry the persons whose names are noted in the margin were alive and it was expected that it could be satisfactorily proved by the evidence of the said persons that after the death of Shridevi there were no heirs of

1. Krishna Noorithaya.
2. Krishna Todthilaya.
3. Puvani Gowda.
4. Hontu Gowda.
5. Narayana Shaburaya.
6. Subraya Noorithaya.
7. Venkatesha Balthilaya.

Rudryya living; but unfortunately all the said persons are now dead. As Rudraya was a Hindu, the Government has to prove in the first instance that at the time of Shridevi's death there were no Sapindas and Samanodaks (Agnates) of Rudrayya living, who could succeed to his estate. Samanodaka relationship extends up to 14 degrees. The Government has to prove further that at the time of Shridevi's death there was no heritable bhandu (cognate) of Rudrayya living. Bhandus are divided into three classes namely Atma Bhandus, Matru Bhandus (i.e. Bhandus related to the deceased through the mother) and Pitru Bhandus (i.e. Bhandus related to the deceased through the father) and there are several heritable bhandus.

5 The persons referred to above by whom it was expected to prove that there were no heirs of Rudraya living at the time of Shridevi's death, being dead, other persons who could give evidence on the above point had to be secured. Four witnesses have been now secured. Of these four, 3 are residents of the village in which Rudrayya lived. They are not men of his caste. They are illiterate men and they are only able to say that they knew the deceased Rudraya, that Rudrayya had only one daughter and no sons and that the daughter also died without leaving any issue. They are also able to say that Rudraya had a sister who also died without leaving any issue They also say further that they have heard Rudraya had two brothers, whom they have not seen, and who predeceased Rudrayya without leaving any issue. They are however unable to say who Rudrayya's mother wa and to which family or place she belonged or whether she had any brother or whether any relation of hers was living at the time of Rudrayya's death. In fact they do not know whether there was any bhandu of Rudrayya living at the time of his death.

6 The fourth witness is a resident of Belthangadi which is about 20 miles from Kokkada village where Rudrayya was living. He is not even of the same caste as that of Rudrayya. He says that every year he was going to Kokkada village at the time of some festival there for the purpose of trade and that he was then lodging in a portion of the house of Rudrayya for about one month in the year and he is only able to say that Rudrayya

had no sons but only one daughter who died without issue. He too is not able to say anything about the Bhandu relations of Rudrayya.

7 It is very doubtful whether with the help of these four witnesses the Government could satisfactorily prove the 1st issue.

8 I may also state that it is now reported that there is one man living at Kalanja namely Laxminaranappayya who is said to be the brother of Subraya to whom one of Rudrayya's sisters was married. It is not yet known whether he knows anything about Rudrayya's mother and whether there was any heritable bhandu living at the time of Shridevi's death He has generally stated before the Revenue Inspector of Kokkada Firka that after the death of Shridevi there was no heir to Rudrayya. This witness it appears is rather reluctant to give evidence. There is thus considerable practicable difficulty inadducing satisfactory evidence on Issue No.1.

9 With regard to Issue No.VIII the Government has claimed past mesne profits for 12 years prior to the date of the suit.

In Secretary of State for India inCouncil Vs Subraya Karantha (1915 Madras Weekly Notes page 692) mesne profits were allowed only from the date on which Defendant was served with notice calling upon him to surrender possession. In this case the Deputy Tahsildar of Belthangady served notices in December 1918 on some of the ~~XX~~ persons who were registered Pattadars and who were in possession of Rudrayya's estate calling upon them to state on what right they claim the properties in their possession and to produce their title deeds. This was in the course of Revenue inquiry. The usual Gazette Notice was published in the District Gazette of 24th July 1919 and the time allowed therein expired in January 1920. There were some mistakes in the notice and a fresh notice was published, in July 1920. The several persons in possession of the estate were actually called upon to surrender possession in July and August 1922. Under these circumstances it is doubtful whether the court will allow mesne profits for 12 years as claimed. If the ~~XXXX~~ case reported in 1915

Madras Weekly Notes be followed probably the Government may get mesne profits from July 1919 or January 1920 if it be held that the Gazette Notification is sufficient notice. But if it be held that the Starting point is the date when the several persons were actually called upon to surrender possession, then the Government would be entitled to mesne profits only from July or August 1922.

10 I also understand that it would be practically impossible to recover mesne profits for 12 years from several Defendants even if there should be a decreee for the same, they being men of no substance.

11 Considering all the circumstances set forth above, I am of opinion that it would be advantageous to accept the proposal.

12 I therefore request that I may be informed whether the proposal may be accepted.

13 The case stands adjourned to the 1st of December and if the proposal is not accepted the trial of the suit will proceed on that date and the attendance of all the witnesses will have to be secured on that date and, if the attendance of the witnesses cannot be secured without fres summonses, I may be informed at least by the 17th instant whether I should summon them. If the proposal is accepted, only one witness will be sufficient to give formal evidence on issue (1) as regards the exparte defendants. So in any case at least one witness able to speak about the relationship will have to be present on 1-12-1926. The Deputy Tahsildar of Belthangadi may therefore be informed that of the 3 witnesses from Kokkada whom he has secured one witness preferably Narayana Gowda must be sent to Mangalore on 30th instant and all the three if the proposal is not accepted.

S.D./12-11-26.

Rev Dept-

Suit - South Kanara - Mangalore subcourt
O.S. No: 59/24 - Escheat - Compromise.
Ff 1-2 Of C No 2495 B/26 from the Board of Rev No:
Ref A. 6176/26-1 dated 12th Nov 1926

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To us

Perusal is requested of the Board's report etc on ff 1-8 Of.

Ff 36-37 of (P) On G.O. No: 959 Rev dated 30.5.2[illegible] the Govt accepted the recommendation of the Board to claim the properties in question by escheat and directed that a suit should be filed if necessary to recover possession. The properties consist of lands and are described in the statement (P) on ff 5-7 of the G.O. ibid their market value was estimated at 2 of (P) Rs 30,000/-. The grounds on which the Govt based their claim are briefly

1) that there were no legal heirs Ff 3-4 of (P) entitled to the properties as established by the evidence of 11 independent witnesses and by the fact that no one had come forward to claim them in response to the notice issued in the District Gazette

2) that the widow and daughter of the owner of the properties had an interest determinable with their life and did not acquire absolute rights

As to his opinion on pp 30-32 of (P)

3) that the alienations made by them were not valid in law except in the case of 2 items of the properties and

4) that the claims of the three of the occupants of the property ~~of the properties~~ ~~of the plaintiffs of properties~~ getting any compensation were slight.

A suit has been filed by the Colls and mesne profits have been claimed for 12 years from the year 1913. The claim amounts to Rs 42 212/-

para 3 on p 4, Cz

The defendants propose a compromise that if the pltfs relinquish their claim for mesne profits for the period beyond three years prior to the date of the suit they would concede that the owner died intestate.

para 1 on p 5 Cz

Where the Crown claims by escheat it must make out affirmatively that there are no heirs. The local pltf pleader states that this is difficult to prove as seven

portion A on p 30 of (P)

paras 4, 5 & 6 on pp 5-6 Cz

witnesses are dead & that the evidence of the other witnesses is practically valueless. As regards the statements made by the seven persons now dead, the Board is inclined to doubt whether they are admissible under § 32 (5) of the Indian Evidence Act

Presumably as they were made only after the question in dispute was was raised & by interested persons

B. R. C's VOL II

As regards mesne profits the Pleader is not sure that the Court will allow the claim for 12 years and considers that the Court may allow the claim from July 1919 or January 1920 if the Gazette notification is accepted as sufficient or from July or Augt 1922 if the date on which the occupants of the properties were called on to surrender possession is taken into account. He mentions a further point — that even if mesne profits are allowed for 12 years it will be difficult to recover the amount as the occupants are men of no substance

The Board recommends that the proposed compromise may be accepted provided the claim for improvements is cancelled by the claim for mesne

profits by fpsl. The claim for mesne profits proposed to be waived amounts to Rs 30,000/- (as against Rs 42,212/- claimed). The amount of Compensation claimed by the defts for improvements has not been reported. Only three persons have claimed Compensation. It is not likely to amount to Rs 30,000/. The Adv. fl was of opinion that the fpsl could proceed on the assumption that the chances of the tenants getting any Compensation were slight. The opinion of the late Sir K. Srinivasa Ayyangar is on pp 34-35 of fo No 959 dated 30.5.1922.

para 3 on p 4 ctg

p 4, ll (P)

p 32 of (P)

(P)

Submitted for orders whether the Boards proposal may be accepted.

The suit stands posted to the 1st Dec 26. The f.O. requests orders before the 17th inst so that in case the suit is to be proceeded with summonses may be taken out in time for the attendance of witnesses.

para 13 on p 8 ctg

Special

Should have investigated into a few files next day

16.11.26

The Bdi proposal may be accepted.

15/11. S.

16.11.26

16/11

17.11.26

Circ 16.11.26

Min draft
17.XI.26.

To us

Draft with a telegram as submitted

17.11.26

Sent.
17/11

Scott. II-5 (5)—25,000—25-11-25. (6)

Revenue DEPARTMENT.

| | Date. | Initials. |
|---|---|---|
| When received for Fair-copying. | | |
| When copied | | |
| When examined | | |
| When signed | | |
| When despatched | | |

Send telegram at once. & this D.P.C. & P. below

17/11

READ AGAIN G.O. No. 959 Rev dated 30.5.1922.

" " " " " " 192

READ ALSO:—

C. No. 2495 B/26 from the Bd of Rev (L.R. & S.) No. Ref A/ No. 61761/26-1 dated 12.11.1926

" " " " " " 192

" " " " " " 192

ORDER.

No. 1995 dated 17-11- 1926.

Mis

The Govt accept the proposal of the Bd of Rev and direct that O.S. No 59 of 1924 on the file of the Sub Court Mangalore may be Compromised on the terms proposed by the defendants provided that their claim for the value of improvements effected is cancelled by the claim for mesne profits made on behalf of Govt.

2 The following teleg-

a/c on h 5 07

h 2 07

rams will be sent to the
Collr of South Kanara:-

Telegram
Suit - Escheat - O.S (No)
59 of 1924 (on the file of
the) Sub Court, Mangalore -
Proposed compromise
on (the) terms proposed by
the) defendants (is) accepted
provided defendants claim
for compensation is cancelled
by (the) claim for mesne
profits (made on behalf of Govt:)

DE... TED
17 NOV 1926

17.11.26

To
The Board of Rev
LRs
Collr of S. Kanara -

DE... TED
17 NOV 1926